

VZCZCXRO2433  
PP RUEHGA RUEHHA RUEHMT RUEHQU RUEHVC  
DE RUEHOT #0347/01 1321820  
ZNY SSSSS ZZH  
P 121820Z MAY 09  
FM AMEMBASSY OTTAWA  
TO RUEHC/SECSTATE WASHDC PRIORITY 9398  
INFO RUCNCAN/ALL CANADIAN POSTS COLLECTIVE PRIORITY

S E C R E T SECTION 01 OF 03 OTTAWA 000347

SIPDIS

STATE FOR PM/DDTC

E.O. 12958: DECL: 05/11/2019  
TAGS: [PARM](#) [PREL](#) [ETTC](#) [CA](#)  
SUBJECT: CANADA SEEKS ITAR RELIEF FOR INDUSTRY

REF: A. MONTREAL 121  
[1](#)B. 08 STATE 92163  
[1](#)C. 08 OTTAWA 685

Classified By: PolMinCouns Scott Bellard, reasons 1.4 (b) and (d)

[1](#)1. (C) Summary: Officials and business leaders in Ottawa told PM Acting A/S Ruggiero that Canadian human rights commissions or courts soon could force the defense industry to stop applying U.S. International Trafficking in Arms Regulations (ITAR) rules that deny proscribed nationals, including certain Canadian dual nationals, access to U.S. defense articles. If the courts intervene in this way, they said, much of the Canadian part of the bilateral defense industrial base will be put "out of business." Canada wants the U.S. to extend to industry a bilateral arrangement that permits Canadian dual nationals with secret-level security clearances to access ITAR-controlled defense articles. Ruggiero explained possible U.S. policy changes that might make it possible to extend such relief to dual nationals operating in a "trusted community" concept. The Canadians appeared reassured by this possibility, and took note of the need for them to build U.S. confidence in the screening process they use for dual national government employees who have access to ITAR-controlled defense articles. End summary.

[1](#)2. (SBU) Assistant Secretary (acting) for Political-Military Affairs Frank Ruggiero met Canadian Government officials and defense industry leaders in Ottawa on May 1 to discuss International Trafficking in Arms Regulations and their effects on Canada's defense and Canada-United States defense trade. A-A/S Ruggiero briefed on the Department's successful effort to expedite the processing of over US\$200 billion in export licenses and technical assistance agreements each year, as well as the National Security Council-led initiative underway to reach agreement on a single USG definition of a "national" for ITAR 126.1 purposes. Canadian business representatives and government officials expressed appreciation for the effort to speed adjudication and drastically to trim the backlog of cases.

Industry: Legal Challenges Cause Concern  
-----

[1](#)3. (SBU) The Canadians highlighted their concerns about the current application of ITAR with respect to Canadian dual nationals from ITAR 126.1 countries as well as permanent residents and temporary visitor workers (refs a,c) They explained that a "cottage industry" of 126.1 dual national complaints had sprung up in response to sympathetic rulings by various provincial human rights commissions and generous awards from industry. The commissions have routinely found that using 126.1 as grounds to deny workers employment, access to particular job sites, or other workplace opportunities is a violation of the Charter of Rights and Freedoms, Canada's Bill of Rights analogue.

[1](#)4. (SBU) Speaking for his private sector peers, Canadian Association for Defence and Security Industries (CADSI)

International Committee Chairman Stanley Jacobson told A-A/S Ruggiero that Canadian industry's adherence to the 126.1 element of U.S. ITAR export control rules exposes it to ever more Charter-based complaints, and that soon the provincial and federal courts will likely intervene and instruct business to permit 126.1 nationals access to ITAR defense articles in the workplace. CADSI's effort until now has been to slow the legal process, paying fines awarded by the tribunals to keep the actual courts (vice the commissions) from hearing the cases and ruling against industry, he said. A negative court ruling "will happen...and it will put us out QA negative court ruling "will happen...and it will put us out of business," he emphasized. Jacobson, a senior executive at Lockheed-Martin Canada, noted that industry wants to "get out of the (reliability and security) clearance business," adding that "we'd like government to do it."

15. (C) Public Works and Government Services Canada (PWGSC) Assistant Deputy Minister (ADM) Jane Meyboom-Hardy observed that ITAR relief for industry is a "top priority" for the Government of Canada. An ITAR regime that would use the ability to qualify for a Canadian government security clearance as a condition of employment, rather than 126.1 dual national or immigrant status, would afford legal protection to both industry and government, she said. Such a system also would do a better job of meeting shared Canadian and U.S. security objectives, Meyboom-Hardy opined.

Industry: Growing Market for ITAR-Free Products  
-----

16. (C) Department of National Defence (DND) Chief of Staff to the ADM for Materiel Jake Jacobson attributed other

OTTAWA 00000347 002 OF 003

"unintended consequences" to the current implementation of ITAR 126.1 in Canada that, he said, undermines bilateral defense relations. He noted that allies like Canada and the United Kingdom who value interoperability with the U.S. now are seeking ITAR-free products. Being ITAR-free is not a ploy to permit sales to unsavory regimes, he emphasized. Rather, it is seen as a useful way to ensure timely bidding and product delivery, as well as ease of post-delivery service on domestic procurements, and to compete with European manufacturers. The Europeans have a competitive advantage when they promise Canada, the UK, and other allies that they can deliver highly capable ITAR-free defense articles, he said. Lockheed-Martin Vice President for Business Development Dan McClure argued that his company's ability to develop Canada's new C\$2 billion combat ship systems integration without ITAR components was key to winning the contract in the face of European competition.

17. (C) A-A/S Ruggiero remarked that he had "low confidence" in the accuracy of European claims regarding supposedly ITAR-free products. He ended the morning session after noting that the U.S. is willing to consider extending to industry the government-to-government ITAR relief that State had negotiated with the Canadian Department of National Defence and other agencies in 2007. A-A/S Ruggiero and senior staff later told officials they must convince the U.S. that Canada has implemented the arrangement outlined in the May and June 2007 Exchange of Letters (EOLs). (Note: The EOLs guide the implementation of dual national and third-country national policy under ITAR, and call for Canadian agencies to review the files of all secret-level cleared employees operating under the EOLs for significant ties to 126.1 countries. After having signed the EOLs, Canadian officials resisted complying with this requirement (ref b). End note)

Government: Extend EOLs to Industry  
-----

18. (C) At the start of the afternoon government session, ADM

Meyboon-Hardy repeated the call to extend the EOLs to industry. She then reviewed measures PWGSC had taken since 2007 to strengthen the Canadian Industrial Security Program (CISP) in order to build U.S. confidence in Canada's export control regime. PWGSC increased manning by 45 percent, she said, from 65 to 95 full-time staff required to provide regulatory oversight and properly engage industry. Independent auditors meanwhile reviewed 40 years of CISP case files and found that the program so far had "fulfilled its security obligations," she added. According to the ADM's Director General for Industrial Security Gerry Denault, in over 1,000 inspections last year, inspectors had uncovered very little non-compliance, almost all of which they judged to be unintentional. Separately, Department of Foreign Affairs and International Trade (DFAIT) Export Controls Director Michael Rooney stressed that Canada's export control list is aligned with the U.S. Munitions List (USML), and that national regulations explicitly incorporate the requirement for U.S. export authorization.

¶9. (S) During a secret-level briefing, Canadian Security Intelligence Service (CSIS) Deputy Director General Celine Boudrias assured A-A/S Ruggiero that there had been "no security breaches to date" involving security-cleared personnel mishandling ITAR-protected defense articles in Canada. The main threats, she said, came from state-sponsored entities from Iran and China operating with diplomatic cover or via front companies in Canada. All Qdiplomatic cover or via front companies in Canada. All elements of the Canadian government except the RCMP depend on CSIS to investigate security clearances, she explained. Therefore, CSIS has a good sense of the security threats faced across Canada, from who wins approval to immigrate to who can work for the Communications Security Establishment (CSE), Canada's NSA counterpart.

¶10. (S) All suitability and initial reliability screenings are conducted by an applicant's relevant "home" bureaucracy, she noted, with CSIS responsible for higher-end reliability and all loyalty determinations. Reliability denials are based on the perception that a candidate's loyalties could lead to that person being manipulated or provoked into doing something wrong, she explained. Meanwhile, loyalty denials are based on the perception that a candidate has or may engage in activities that threaten Canadian national security. Roughly two percent of applicants who make it to the security investigation stage of their application for employment are refused clearances (ref c).

¶11. (C) Canadian Border Services Agency (CBSA) and Royal Canadian Mounted Police (RCMP) law enforcement officials

OTTAWA 00000347 003 OF 003

briefed on recent export control-related law enforcement cooperation. CBSA highlighted Project Hellfire, in which U.S. and Canadian law enforcement agencies jointly investigate Chinese, Iranian, and other targets of mutual interest operating in Canada and the United States.

¶12. (C) Near the end of the afternoon, Meyboom-Hardy sought guidance on how to advance additional ITAR relief. A-A/S Ruggiero said that possible U.S. policy changes might make it possible to extend relief to dual nationals operating in a "trusted community" concept. He clarified, however, that under potentially revised U.S. rules, Canada's Charter issues probably would persist with respect to 126.1 permanent residents and foreign temporary workers.

¶13. (C) Shortly after the meeting, Denault commented that he "liked what he heard" on the dual national issue. He noted, however, that Canada would face Charter challenges by permanent residents (and to a lesser degree by foreign temporary workers), and suggested that the issue could be finessed by having business and government require security clearances for all workers who have access to classified and unclassified defense articles. Despite the high cost and

"overkill" of doing so, he observed, making access to ITAR defense articles contingent on security clearances seems to be the best way to deal with Charter challenges, he observed.

Comment

-----

¶14. (C) Canadian progress is evident in the better communication with ICE and other U.S. law enforcement counterparts (ref c). But it also is important that the Canadians continue their efforts to implement a process to screen individuals who would have access to ITAR hardware and technology in accordance with the EOLs. This screening process, which would focus on significant ties with countries of concern and other security-based reliability criteria, is more likely to withstand judicial scrutiny than the simplistic "country of birth" criteria. The latter criterion was declared invalid by the Quebec Commission of Human Rights last month (ref a). Though the Commission's findings are not a binding judicial resolution of the matter, the case is likely to be appealed to Canadian federal courts. The federal courts are more likely to uphold "bona fide" job requirements or conditions of employment where they rest on criteria that are not explicitly based on national origin, such as a security clearance. Pending U.S. NSC resolution of the issue of "nationality," the message to the Canadians (in both government and industry) should be to continue to press ahead with implementation of an effective screening process for employees with access to ITAR hardware and technology. End comment.

¶15. Acting Assistant Secretary Ruggiero has cleared this message.

Visit Canada,s North American partnership community at [http://www.intelink.gov/communities/state/nap /](http://www.intelink.gov/communities/state/nap/)

BREESE